

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

FRANKIE WILLIAMS, #1302092	§	
VS.	§	CIVIL ACTION NO. 6:07cv535
DIRECTOR, TDCJ-CID	§	

ORDER OF DISMISSAL

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Judith K. Guthrie, who issued a Report and Recommendation concluding that the petition for a writ of habeas corpus should be dismissed for failure to exhaust state habeas corpus remedies. The Petitioner has filed objections.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Petitioner to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of the Petitioner are without merit. In his objections, the Petitioner complained that the State failed to honor the terms of the plea bargain. He specified he made a mistake in answering “no” to the question whether he had filed any other motions or petitions concerning his conviction in state court. He explained that he filed a motion for a nunc pro tunc judgment in the district court and did not receive any response. He subsequently filed a petition for a writ of mandamus in the Twelfth Court of Appeals, which was denied. The Report and Recommendation correctly noted that he must file an application for a writ of habeas corpus in the state district court, which is responsible for forwarding the application to the Texas Court of Criminal Appeals. Exhaustion is not complete until the Texas Court of Criminal Appeals issues a decision. The Petitioner has not shown that he presented his claim that the State failed to honor the plea bargain to the Texas Court of Criminal

Appeals, thus the petition should be dismissed for failure to exhaust state habeas corpus remedies. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the petition for a writ of habeas corpus is **DISMISSED** without prejudice for failure to exhaust state habeas corpus remedies. All motions not previously ruled on are hereby **DENIED**.

So **ORDERED** and **SIGNED** this 21st day of December, 2007.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE